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PUBLIC AND GOVERNMENT LAND — POST COLONIAL LAND SYSTEMS

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Abstract: The effective management of state government property and the development of parcel-based land information systems are inhibited by administrative, legal and accounting mechanisms dating from colonial days. For environmental and efficiency and effectiveness reasons, new ways of categorising Crown and other government land are required. A distinction needs to be drawn between operational and other property to enable mechanisms such as rent or interest to be applied to operational property. Land status as Crown land or freehold should no longer be a determinant of responsibility for management or financial accountability. In the process of reforming the machinery of government for property management, the opportunity should be taken to rearrange the responsibilities for the certification of title and for boundary establishment.

A large proportion of the land of Australia is in public ownership. Victoria has approximately forty per cent of its land area held by the state government. New South Wales has ten per cent and the desert states of Western Australia and South Australia have a much greater proportion. This property ranges from deserts through to rain forests, from land on pastoral leases to prime central business district sites, from parks of various sizes and functions to sites for schools, hospitals and other institutional uses. Governments over the years have invested immense sums in property. They are landlords of many investment properties and are involved in development projects for ultimate private use.

No state government has a clear picture of what it owns. Responsibility for management of government land, which was once centralised in Crown Lands Departments in some states has been fragmented by *ad hoc* changes. Even where a Lands Department is still the body with the central responsibility, major modernisation is required to bring to that task systems which will ensure the efficient and effective use of resources on the one hand and the protection of environmental values on the other.

Categories of government property

Government property can be categorised as follows:

- operational property used by government agencies, both non-statutory and statutory, in the course of their operations;
- investment properties, either long term leasehold or property destined for sale to the private development sector;
- land banks, that is land held because of its potential as operational or investment property;
- conservation property, such as national parks and conservation reserves and coastal lands, river frontages, forest reserves and heritage items.

While the boundary lines between categories may be difficult to settle at times, it is clear that different policies and procedures need to be applied to, say, investment and operational property as compared with those for conservation lands. Investment and operational properties can, and sometimes should be, considered as assets which are presently in the form of real estate. Conservation lands, on the other hand, should be seen as real estate assets held by government as trustee not only for future generations, but on behalf of the world's environment.

*The ideas in this paper were developed while working as a management and policy consultant to the present Victorian and previous Tasmanian governments, but they do not necessarily represent the views of members of either government. The description of Crown land and budget procedures is based on Victorian practices, but has been generalised as most states have very similar approaches.

Historical background

Systems of administration and law are products of history, and history plays an important role in the administration of a state's property holdings. In all states, the unalienated lands of the Crown were seen as a major source of revenue for the development of the Australian colonies. On occasions, the provision of land below market prices provided an inexpensive way of encouraging what were considered appropriate forms of development.

Such moneys as were received for Crown grants to settlers went into consolidated revenue and became part of the funds available for general government purposes. Usually, there was no nexus between the source and allocation of funds.

All unalienated lands were available for alienation to the private sector, unless they had been "reserved" for one or other of the public purposes specified in the various Lands Acts. When land was no longer required for a public purpose it was reserved for some other purpose, or became "unreserved" and available for alienation. Information regarding the legal status of parcels of Crown lands and the boundaries of those lands was kept on the parish plans and files held by the Lands Departments or the Surveyors General (who were an inherent part of the Lands Departments).

When a parcel of land was alienated, a Crown grant was issued by the Governor on the recommendation of the Minister for Lands acting in accordance with the provisions of the Lands Act. The Crown grant became the first certificate of title in the Torrens Register of Titles. Further dealings were noted on that certificate of title. If a subdivision occurred, new certificates of title were issued for the newly created lots.

The inclusion of a Surveyor General and his staff within the Department of Lands in the various states has ensured that there has been a reasonably accurate description of the boundaries of the Crown grants. However, in no state was there first established a network of monumentation which enabled those parcels to be described in relation to the coordinates of the network. This fact, and the existence of separate surveying staff in the various titles offices and the different legislative duties imposed on the Registrars General and Surveyors General, has led to some inconsistencies between redefinition of the boundaries of those allotments identified by the Surveyor General and those detailed on the certificates of title held by the Registrars of Titles.

The administrative and legal division between these two important statutory offices has made far more difficult the development now of a cadastra which can serve as the basis for a state wide land information system (LIS).

The statutory authorities

The creation of many statutory authorities and semi government bodies since the last century has complicated the administration of government lands.

- Crown land might be reserved for the particular purpose of an authority and managed by that authority.
- Crown land could be granted to an authority as a Crown grant and held by it in freehold.
- Land may also be "vested" in an authority. Although it has sometimes been said that vesting is "almost like freehold", the right to alienate at the option of the authority was seldom granted.
- Freehold land could be acquired by an authority. (Sometimes the land reverted to the Crown and was then reserved for the purpose of the authority).

If Crown land was no longer needed by an authority it was unreserved and sold by the Crown Lands Department. The value of any improvements made by the authority would be reimbursed to that authority. The value of the land would be credited to consolidated revenue.

Departments, as against authorities, generally were not reimbursed for improvements. Most statutory authorities are funded by loans which they are required to repay out of earnings, grants or taxes. Departments, on the other hand, are funded from grants from consolidated revenue or from moneys raised as loan capital by the state. The repayment of funds obtained as loans is the responsibility of the state generally and not of individual departments.

Unlike statutory authorities, departments do not have balance sheets. Their ministers do not need to be concerned at budget time with finding

revenue to repay loans raised to fund the capital stock of the organisation. Accordingly, there are no accounting reasons why the sale price of any assets should be credited to a department. The loans are generally the state's to repay, the proceeds of the sale of assets purchased by those loans likewise generally belong to the state.

The same logic, by and large, was applied where freehold land was purchased by a statutory authority or where an authority had paid for a Crown grant. If these lands were sold, the authority kept the proceeds of sale, whether the freehold had reverted to Crown land or whether the authority was on the title as the registered proprietor.

Departmental property

As a general rule, when a department wanted to purchase a parcel of freehold land it would be done by the Lands minister. The freehold title was cancelled and a parcel of Crown land was created which would then be reserved for the particular public purpose of the department. The certificate of title was destroyed and a fresh Crown grant would need to be issued if the land, at some later time, was not required and was again alienated.

In the absence of legislation, neither departments nor ministers could be registered proprietors of freehold land. By statute, some ministers have been made a "corporate-sole" for the purpose of holding freehold land. Whether the minister becomes an operating statutory authority, or is merely a corporate body for title purposes, depends on the terms of the individual statutes. Where the minister is a corporation for reasons only of being able to hold title (as with Education in Victoria), then the proceeds of sale of any land generally are paid into consolidated revenue.

So far as administration is concerned, where the land is held as freehold, the relevant department or authority may arrange for its disposal. Where the land is Crown land then only the Lands minister and his department are legally entitled to arrange a sale and then only within the powers laid down by the Crown lands legislation.

The effective and efficient use of property resources

In the late 1970s all governments realised that they were sitting on substantial property assets which were under-utilised. Programs were undertaken in most states to identify and sell such property. Two difficulties arose: first, information about the properties owned by government was inadequate; secondly, public sector managers were reluctant to admit that property was under-utilised or would not be utilised in the future.

The present methods of accounting for real estate assets do not encourage public sector managers to offer property for disposal. Holding and maintenance costs do not appear in their individual budgets. Budget bids for capital funds for acquisition of property are unrelated to the proceeds that may have been received by consolidated revenue from the disposal of any property. In short, there is every reason for retaining property and no incentives for disposing of it.

Various mechanisms have been discussed or implemented to encourage managers to make more effective use of their existing real estate assets. For example, the Victorian government has agreed to a notional crediting of departments for some of the proceeds of some of the properties which are sold. The issue of principle is whether the government's priorities from year to year should be affected in any way by the extent to which a department may have a reservoir of under-utilised real estate.

Does such a "credit" in reality mean anything? Public sector managers could be suspicious that over time, annual allocations by government would be reduced to those departments which had managed to obtain large credits from property transactions. In addition to such mechanisms, most governments have attempted to develop a register of government owned land, usually as a separate exercise from the development of a general land information system.

Issues to be resolved

Five things need to be done to unravel these strands of history:

- Administrative, legal and accounting systems which can distinguish between different types of public property need to be developed.

- The nexus between tenure and administrative and financial responsibility needs to be broken.
- The administrative responsibility for different aspects of a land information system needs to be resolved.
- Mechanisms need to be developed which will encourage more efficient use of land and avoid poor location decisions by government for its activities.
- General land information systems need to be developed with the capacity to provide sufficient information about all parcels "owned" by government to enable effective management of those assets.

Distinguishing between government land and public land

Any system of effective management of Crown lands and government property requires a post colonial set of categories for land holdings. It is suggested that two broad categories are needed. In Victoria, these are being referred to as "public land" and "government land" and legislation reforming Crown land law around these concepts soon will be introduced. Organisational changes have created two new departments from a number of individual agencies. The Department of Conservation, Forests and Lands has primary responsibility for the management of public land while Property and Services looks after government land.

"Public land" is land which has aesthetic, historic, scientific or social significance or other special value (including areas that, although not needed to satisfy a specifically known demand, have value to meet future demands as yet undefined for future generations as well as the present community). Included in public lands, therefore, are the many classes of existing conservation reserves as well as unallocated Crown land.

"Government land" is land that is not "public land" which is used or will be used for the purpose of any public works or services or any other specific purpose and is held by the Crown.

That is "government lands" are assets presently in the form of real estate while "public lands" are everything else. Once parcels of "government land" have been identified, financial accounting mechanisms can be applied to the property. Market mechanisms and disciplines can be brought to bear on its management. Because these mechanisms would not be appropriate for public land, the categorisation of Crown and other government owned lands into the two broad categories is essential if efficient and effective management of a government's operational land is to be achieved.

So far as Crown land management is concerned, there are other advantages in distinguishing between public and government land. Public land will be effectively "reserved" for future generations. Parcels which are to be alienated should go through a public process to be recategorised as government land before alienation can take place. This process would be the reverse of the present situation under Crown land law where land is available for alienation unless it has been specifically identified and reserved.

Effectively, this change disposes of the assumption on which the Crown land law of every state is based, namely, that unreserved Crown land is "wasteland" until a specific use or reservation has been identified. In an important sense, the "onus of proof" is reversed in favour of retention in public ownership. The change also should allow land use constraints to be applied which are more detailed and site specific than the simplistic reserve descriptions presently used.

Separating title from responsibility or accounting mechanisms

The distinction between freehold and Crown land should disappear as a mechanism for allocating responsibility for the management of government or public lands or for the choice of accounting mechanisms for the use of such land. All parcels, be they freehold or Crown land, should be included in the Title Register. This can be done by following the New South Wales example of lodging plans of subdivision for Crown lands and issuing titles in the name of the state. The status of any particular parcel as public land or government land can be noted in the Register by means of a special number or notation on the certificate of title. (Unfortunately, this approach has not been

adopted in Victoria where a separate register will be kept for Crown lands.)

With the nexus between title and responsibility broken, ordinary administrative systems can be used to allocate responsibility for the management of parcels of public and government land. In the same way budget and other administrative mechanisms can nominate how the manager is to account for the land.

Accounting for the use of government land

The recategorisation of Crown land into government land and public land will enable government departments and authorities to be held to account in market terms for the use of government land or those parcels of public land which are to be treated as government land for accounting purposes. For example, an historic courthouse which is used for its original purpose may be categorised as public land, thereby signifying that it is to be held for future generations, but it may well be "rented" to the Justice Department in the same way as space in a modern building is rented to the Justice Department.

The long term solution must lie in adopting accounting mechanisms which encourage managers to view real estate assets in the same way as they do any other of their resources. Instead of *ad hoc* mechanisms for rewarding managers who relinquish property, there should be a consistent discipline applied to all managers to encourage efficient and effective management of all assets, including real estate.

If property assets are to be treated in the same way as any other asset, then presumably some mechanism of management accounting will be found to include the cost of the use by departments, as well as statutory authorities, of real estate assets in the operations of their programs. If these accounting mechanisms are capable of ensuring efficiency and effectiveness in the use of the total resources available to an authority or a department, then it may be unnecessary to have a central agency which monitors the effective and efficient use of property holdings. Property will just become another asset to be managed along with the rest.

As noted above, accounting for the use of real estate assets at present differs between departments and statutory authorities. Accounting mechanisms to ensure efficient and effective use of real estate assets by statutory authorities can be and, in some cases, are well developed. In Victoria, and other states, the Annual Reporting Acts can be used to specify mechanisms to improve their accountability and the information about property holdings. For example, authorities could be required to include in their accounts performance indicators such as the current value rather than merely the purchase price of real estate assets.

So far as departments are concerned, if program budgeting is to present a complete picture of the assets, as well as the resources, used to produce a program, some measure of the cost of the real estate assets involved will be required. The issue is whether the form of program budgets can accommodate a means of bringing property assets into account.

For example, in Victoria the program budget is also intended to be an appropriation mechanism — it is not merely a management accounting mechanism as it is in South Australia. The South Australians include in the program budget for departments the proportion of interest on the state's debt which is applicable to the capital assets used in delivering a program. This could be shown separately in Victoria as part of the information which is additional to the appropriation information. As an alternative to interest, rent could be charged for real estate used or held by departments.

Effectiveness and locational issues

There could be some advantages in a rental system. A variety of government activities have been poorly located in the past because, at the time of decision, there was available a parcel of "free" government land. If rent was charged, advantage may be seen in trading off space for location.

Education departments may see benefit in leasing space in local community centres rather than have their own school buildings which are used for part of the year only. A major reason why the vast community centres, which are called "schools", are so little used flows from the way governments account for property. As the Education departments "own" their well equipped centres, and as their budgets are

intended for educational purposes, there is no incentive to maximise their use. If departments had to rent space for teaching purposes from the local council there would be a different result. The council would be keen to encourage other usage, as would the departments. The more use the centre received for non-teaching activities, the less rent need be charged to the department. Instead of the present disincentives, school principals would have a financial incentive to see the centre used by others.

Business operations which use "free" Crown land may be reassessed. For example, a Forests Commission may not think it "cheaper" to plant pines on Crown land, rather than on farm land, if it had to pay rent for that Crown estate. A university may be prepared to spend funds on car parking stations and locate close to public transport rather than seek "free" land for surface car parks. Public housing authorities may be able to trade in inappropriately located (for their purpose) parcels of "free" left over government land and put the proceeds towards the purchase of houses in places where tenants want to live. And so on. . .

Charging rent would avoid the need for the artificial reward systems for managers who relinquish property for sale. The notional or actual rent charges in each manager's budget would provide the opportunity for an annual review of property holdings.

As against a rental system, it can be argued that for those departments and agencies which are not funded by fees or hypothecated taxes, the charging of rent or interest would be but a book entry. Their allocations would need to be increased to meet the rent charges. Administrative costs would be increased, especially for collecting information about existing properties and their values. Total budget outlays would seem to increase, thereby giving opposition parties a chance to score points. Thus, while there are advantages in making managers aware of the cost of real estate assets under their control, the means of so doing need to be administratively feasible, cost effective and not politically damaging.

Reconstructing administration for title and boundary responsibility

Although it is not central to the effective management of government property, in the process of rearranging administrative procedures for these purposes it is appropriate to construct a new system of administration for responsibility for boundaries and title. In Australia, the Registrars of Titles are responsible for title and boundary information on freehold land while the Surveyors General or Lands Departments are responsible for status of Crown land and its boundaries. The development of an effective, parcel based, land information system requires one authority to be responsible for all boundary definition and one authority to be responsible for recording the status of ownership of those parcels. The authority could be responsible for both titles and boundaries but the present division of responsibilities with two authorities, each with responsibility for title (or status) and boundaries, should no longer continue if effective returns are to be made from the substantial investment in land information systems.

The rearrangement of responsibilities will not be easy to achieve. Difficult issues will have to be resolved concerning the employment of staff and the legal principles to be applied to boundary definition and redefinition.

Conclusion

All state governments are attempting to unravel their property management and land information processes. There are many strands — the changed attitudes toward the environment, demands for accountability in the use of government assets, the development of land information systems and the changes in the technology of collecting, storing and delivering land information.

Statutory, administrative and accounting mechanisms need to be fundamentally rethought in the light of modern rather than colonial principles and attitudes. Changes need to recognise the colonial foundations of the present arrangements but not be bound by them.

The suggested recategorisation of Crown land into public and government lands and the other concepts outlined in this paper provide a basis for the development of new approaches which, if adopted, would provide a model for other former British colonies.